

IN THE COURT OF APPEAL OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA

C.A. No. 124/2009

H.C. Kandy 378/2007

Kona Gedara Podi Mahattaya
Ihalagama,
Weliwathura Gedara,
Pussallawa.

Appellant

Vs.

Hon. Attorney General
Attorney General's Department
Colombo 12.

Respondent

CA 124/2009

H.C. Kandy Case No. HC 378/2007

BEFORE : Sisira de Abrew, J. &

P.W.D.C. Jayathilake, J.

COUNSEL : SSC Dileepa Peiris for the Appellant.

Udaya Bandara for the accused-respondent.

ARGUED &

DECIDED ON : 04.04.2013.

Sisira de Abrew, J.

Heard both counsel in support of their respective cases. The accused-respondent in this case was convicted on his own plea of the offence of grave sexual abuse and was sentenced to a term of two years rigorous imprisonment suspended for five years, to pay a fine of Rs. 3000/- carrying a default sentence of three months simple imprisonment and to pay a sum of Rs. 100,000/- to the victim as compensation carrying a default sentence of two years simple

imprisonment. Being aggrieved by the said sentence, the Attorney General has appealed to this court. Learned Senior State Counsel submits that the sentence imposed by the learned High Court Judge is inadequate in view of the offence that the accused has committed. Learned Prosecuting State Counsel in the trial court, submitted that the victim, at the time offence, was, under 10 years of age. The accused, at the time of the offence, was a 65 year old man.

Learned Counsel appearing for the accused-respondent submits that at the time of sentencing by the learned High Court Judge the accused was a 70 year old man. We note from the proceedings in the High Court that, at the time of the offence, the accused was a 65 year old man and at the time of sentencing he was 70 a year old man. Learned Counsel who appeared for the accused-respondent at the trial has submitted that the accused did not have any previous convictions.

When we consider the submissions made by both parties at the trial court and the submissions made by both counsel in this court we note that at the time of the offence the victim was below 10 years of

age. We also consider the fact that accused, without wasting time of Court, has pleaded guilty to the offence. But in our view, the sentence imposed by the learned High Court judge is inadequate. We therefore set aside the sentence of imprisonment imposed by the learned High Court Judge and impose two years rigorous imprisonment. The fine and the amount of compensation ordered by the learned High Court Judge remain unaltered. Learned High Court Judge of Kandy is directed to issue a fresh committal when the accused is produced before the High Court.

Sentence altered.

JUDGE OF THE COURT OF APPEAL

P.W.D.C. Jayathilake, J.

I agree.

JUDGE OF THE COURT OF APPEAL

NR/-